

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25728 OF 2005

DATED: 13th DECEMBER, 2005

Between

Koya Narasimha Swamy s/o Venkata Krishnaiah

... Petitioner

and

The District Collector, Krishna District and others.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25728 OF 2005

ORDER:

The first respondent issued notification on 27.12.2004 inviting tenders/bids and participation in the auction to lease out right to quarry sand for Kothapet reach in Krishna river. The auction was conducted on 17.01.2005. The petitioner became the highest bidder by quoting a sum of Rs.22,00,000/- and paid a sum of Rs.5,55,000/- being 25% of bid amount. The tender conditions require the successful bidder to deposit balance of the bid amount within five days after the issue of confirmation order. The petitioner alleges that he made all arrangements for discharging the said obligation. He was laid up due to ill health from 05.02.2005 to 02.03.2005 but did not receive any confirmation order from the first respondent. He states that when he went to the office of the second respondent, he was informed that the confirmation order was sent by post. He did not receive the same but he voluntarily approached the second respondent and submitted a demand draft for an amount of Rs.11,45,000/- on 15.03.2005 and also submitted necessary stamp papers for execution of the lease deed. In the meanwhile, the villagers of Kothapet filed writ petition being W.P.No.6429 of 2005 and this Court stayed the confirmation of the tenders. By reason of which, the lease deed could not be executed. The said writ petition, however, was dismissed as withdrawn on 05.07.2005. Thereafter, the petitioner approached the respondents requesting for issue of work orders and for completion of legal documentation. He also submitted representations on 12.07.2005 and 30.08.2005, in vain. He received the communication dated 24.10.2005 from the first respondent intimating that the lease in his favour was cancelled on 28.03.2005 as he failed to deposit the balance of 75% of bid amount within the stipulated time. He was also informed that the said order was preceded by a show cause notice dated 15.03.2005. The petitioner alleges that he never received the show cause notice or the cancellation order dated 28.03.2005. Therefore, assailing communication dated 24.10.2005 as well as cancellation order dated 28.03.2005, the present writ petition is filed. The petitioner seeks a declaration that the action of the respondents is illegal and violative of principles of natural justice and for a consequential order directing the respondents to enter into agreement with the petitioner and issue work orders for Kothapet reach.

The learned counsel for the petitioner strenuously contends that the impugned cancellation is void as it is in breach of principles of natural justice. He would urge that the second respondent accepted the balance of 75% of the bid amount on 15.03.2005 and therefore the principle of waiver operates against any cancellation as the amount was accepted without any demur. He would also contend that though the writ petition filed by the villagers was pending before this Court for more than four months, the respondents never brought to the notice of this Court about the alleged cancellation and therefore it is not fair on the part of the respondents to contend that the sanction is cancelled.

The learned Assistant Government Pleader for Panchayat Raj, **per contra**, on instructions, submits that the petitioner failed to pay the balance of 75% of the bid amount within the stipulated time i.e., 01.02.2005 but paid the amount on 15.03.2005

and therefore after issuing notice, the lease was cancelled. He also submits that the second respondent did not accept the amount and on request made by the petitioner the amount of Rs.16,45,000/- by way of demand draft was returned to the petitioner and after conducting fresh auction, the bid was knocked down for a sum of Rs.39,00,000.02 ps against upset price of Rs.22,00,000/-. The learned Assistant Government Pleader submits that the forfeiting of 25% of amount is in accordance with law and therefore no interference is called for in this writ petition.

The auctioning of sand bearing areas to lease out for quarrying sand is governed by Rules 9-B to 9-X of A.P.Minor Mineral Concession Rules, 1966 (for short, the Rules), which were inserted by Government Notification vide G.O.Ms.No.1, Industries & Commerce (MI) Department, dated 01.01.2001. These Rules provide that District Level Committee (hereafter called, the Committee) shall lease out sand bearing areas (sand reaches) by sealed tender-cum-public auction. Rule 9-C requires the Committee to issue a notice inviting public participation in the auction to lease out sand bearing areas duly laying down the conditions. An intending bidder has to submit application by duly paying 25% of the upset price as Earnest Money Deposit (EMD) (see Rule 9-D of the Rules). Rule 9-H provides that when the bid is knocked down by the competent authority, the successful bidder shall remit 25% of the knocked down amount to the District Panchayat Officer on the immediate next working day and shall remit remaining 75% of the knocked down amount to the Zilla Parishad concerned on or before the date specified in the order of the confirmation and submit proof to the District Panchayat Officer. Thereafter, the highest bidder shall execute a lease deed in form G-I on stamped paper as per the Registration and Stamp Act within a week and shall commence the lease thereafter. The confirming authority is given the power to condone the delay in payment of 75% of the knocked down amount not exceeding two weeks from the date of confirmation of the sale. This procedure is laid down in Rule 9-H (1) and (2) of the Rules. Sub rule (3) of Rule 9-H empowers the confirming authority to forfeit the deposit made to the Government if the bidder fails to pay either 25% of the knocked down amount on the next working day of auction or remaining 75% of the amount within specified time as mentioned in the confirmation order. This rule position is neither denied nor disputed.

In this case, auction was conducted on 17.01.2005 as notified. The petitioner became the highest bidder at Rs.22,00,000/-. He deposited a sum of Rs.5,55,000/- on 18.01.2005. The District Collector issued confirmation orders on 25.01.2005 directing the petitioner to pay the remaining 75% of the amount of Rs.16,45,000/- and execute lease agreement within seven days from the date of receipt of confirmation order i.e., 01.02.2005. The petitioner did not pay the amount. The said order was dispatched on 25.01.2005 by Registered Post with Acknowledge Due to the petitioner but he did not pay the amount. Therefore, notice dated 15.03.2005 was issued informing the petitioner that the amount will be forfeited. He did not submit any reply. Therefore, the first respondent issued proceedings on 28.03.2005 cancelling the lease and ordering forfeiture of a sum of Rs.5,55,000/-. The petitioner again approached the first respondent on 16.08.2005 in response to which the District Collector issued another letter dated 24.10.2005 informing that the amount of 25% paid by the petitioner is forfeited as he failed to comply with the conditions of

the auction. Insofar as the procedure adopted by respondents is concerned, it is unexceptionable and within the parameters of the law as noticed hereinabove.

The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in **R.K.Saxena v Delhi Development Authority**. The said decision does not laid down any principle of law. It turned more on the facts. It was found by the Supreme Court as a question of fact that the appellant therein paid the remaining bid amount within thirty days when it was required under the terms and conditions of auction to pay within sixty days. In this case, admittedly the petitioner paid the amount even without receiving the confirmation order only on 15.03.2005, which is beyond the time prescribed under Rule 9-H (1) of the Rules.

The submission that he did not receive confirmation orders and that he did not receive the notice dated 15.03.2005 are misconceived and cannot be accepted. The answer is found in the cancellation order itself. It appears the petitioner also became the highest bidder for another sand bearing area, namely, Mulapadu sand reach. The confirmation order was dispatched in respect of the said reach on 28.01.2005. The petitioner received the same and executed agreement and started working the lease. Further, on 04.02.2005, the petitioner came to the office of Sub Registrar for executing lease deed but fained ignorance of receiving confirmation order in respect of Kothapet reach. Therefore, a reasonable inference can be drawn that the petitioner made incorrect statement only to gain advantage in this proceedings. Secondly, the confirmation order was sent by Registered Post with Acknowledgement Due to the address given by him and therefore a presumption can be drawn under Section 27 of the General Clauses Act, 1897. The petitioner cannot now after the amount is forfeited contend that he did not receive the confirmation order. It is his case that even though he did not receive confirmation order, he deposited the amount on 15.03.2005, which was accepted without any demur. Even according to the petitioner, he is required to pay remaining 75% of the amount within the stipulated time as mentioned in the confirmation order. If he did not receive confirmation order, his grievance would have been to approach this Court or authorities seeking such confirmation order and without receiving such confirmation order, he could not have paid the amount on 15.03.2005. Be it noted, as per the Rules, it is only after issue of confirmation orders, the highest bidder gets a right to compel the respondents to enter into lease agreement and issue work permits. Be that as it is, as contended by learned Assistant Government Pleader, the bidder was informed by Registered Post about the confirmation but failed to pay the amount on or before 01.02.2005. Therefore, it must be held that the action of the respondents in forfeiting 25% of the amount paid by the petitioner is in accordance with law and does not suffer from any vice. Insofar as the amount of Rs.16,45,000/- or whatever the amount paid by the petitioner on 15.03.2005, the same was already returned to him and therefore no observation need be made in that regard.

The writ petition, for the above reasons, is devoid of any merit and is accordingly dismissed without any order as to costs.

(V.V.S.RAO,J)

13.12.2005.

pln

Note: LR copy be marked.

(By order)

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